

Message Text

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TAGS: EMIN, BL

SUBJECT: IMPC/EMBOSA

1. SUMMARY. ON OCTOBER 27, REPRESENTATIVES OF IMPC (LEGAL COUNSEL ROBERT ARANGIO AND MR. JOHN LEAMING) CAME TO DEPARTMENT TO DISCUSS COMPANY'S INVESTMENT DISPUTE WITH THE GOB. AFTER REVIEWING COMPETING LEGAL ARGUMENTS, WE RECOMMENDED AGAIN THAT THEY TALK DIRECTLY WITH COUDERT BROS., COUNSEL FOR THE GOB, AND SAID THAT WE WOULD APPROACH THE GOB ON THIS MATTER AT THE SAME TIME. DEPARTMENT WOULD APPRECIATE EMBASSY'S ASSESSMENT OF HOW ANY SUCH APPROACH WOULD LIKELY BE RECEIVED AND ANY SUGGESTIONS IT MAY HAVE AS TO HOW TO PROCEED IN THE IMPC MATTER. END SUMMARY.

2. ARANGIO AND LEAMING'S VISIT TO THE DEPARTMENT PROVIDED OUR FIRST CONTACT WITH THEM IN MORE THAN A YEAR, EXCEPT
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FOR A BRIEF LETTER LAST JANUARY REQUESTING OUR OPINION AS TO THE APPLICABILITY OF THE HICKENLOOPER AMENDMENT TO THE IMPC CASE. AT THAT TIME, THEY HAD BEEN CONTACTED BY COUDERT AND WERE CONTEMPLATING ENTERING INTO SUBSTANTIVE DISCUSSIONS WITH THAT FIRM, BUT THEY WERE ANXIOUS TO HAVE THE DEPARTMENT'S VIEWS REGARDING HICKENLOOPER BEFORE PROCEEDING. L/ARA ANSWERED ON MARCH 31, BUT FOR SOME REASON

ARANGIO NEVER RECEIVED THE LETTER AND DID NOT BEGIN DISCUSSIONS WITH COUDERT AS PLANNED. LEAMING RECENTLY CONTACTED SPEAKER O'NEILL (A PERSONAL FRIEND) ABOUT OUR SUPPOSED FAILURE TO RESPOND, AND H SET UP THE MEETING WITH L/ARA.

3. WE BEGAN THE MEETING BY PRESENTING THEM WITH COPIES OF THE LETTER WHICH THEY HAD NEVER RECEIVED. THIS LETTER REPEATED OUR TRADITIONAL POSITION THAT THE UNEQUIVOCAL LANGUAGE OF THE RELEASE IMPC SIGNED WHEN IT ACCEPTED 1.4 MILLION DOLLARS FROM COMIBOL MIGHT MAKE IT VERY DIFFICULT TO ESTABLISH THAT IMPC HAD NOT RECEIVED ADEQUATE COMPENSATION UNDER INTERNATIONAL LAW. WE ALSO POINTED OUT THAT IMPC HAD NOT PURSUED ALL AVAILABLE LEGAL REMEDIES, WHICH PRECLUDED THE DEPARTMENT'S TAKING A POSITION ON THE APPLICABILITY OF THE HICKENLOOPER AMENDMENT TO ITS CASE AT THIS TIME. WE NOTED, HOWEVER, THAT THESE CONSIDERATIONS DID NOT PRECLUDE US FROM MAKING EFFORTS TO BRING ABOUT A RESOLUTION OF THE DISPUTE, AND THAT THE EMBASSY HAD BEEN VERY ACTIVE IN THIS RESPECT IN THE PAST. AFTER READING THE LETTER, ARANGIO ASKED WHAT POSITION THE DEPARTMENT WOULD TAKE REGARDING COMIBOL'S AND THE GOB'S IMMUNITY FROM SUIT IF THE CASE WENT TO COURT. WE EXPLAINED THAT, AS A RESULT OF THE FOREIGN SOVEREIGN IMMUNITIES ACT OF 1977, THE DEPARTMENT NO LONGER HAD STANDING TO MAKE DECISIONS RELIMITED OFFICIAL USE

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GARDING THE IMMUNITY OF FOREIGN GOVERNMENTS FROM SUIT AND THAT QUESTIONS OF THIS NATURE WOULD HENCEFORTH BE DETERMINED ENTIRELY IN COURT. ARANGIO REITERATED THAT HE WAS CONFIDENT THAT IMPC COULD OBTAIN JURISDICTION OVER COMIBOL IN U.S. COURT, AND WOULD PROCEED TO DO SO IF THAT WERE ONLY OPTION OPEN TO COMPANY.

4. THE DISCUSSION THEN TURNED TO WHAT COULD BE DONE TO PROMOTE AN OUT-OF-COURT SETTLEMENT OF THE CASE. ARANGIO AND LEAMING REITERATED THEIR STRONG PREFERENCE FOR NOT HAVING TO FILE SUIT AND ASKED WHAT ASSISTANCE WE COULD PROVIDE. WE NOTED THAT WE HAD DISCUSSED IMPC'S CASE WITH THE GOB ON NUMEROUS OCCASIONS IN THE PAST WITHOUT SUCCESS. THEY OBJECTED THAT OUR EFFORTS HAD NOT BEEN SERIOUS AND SAID THEY NEEDED MORE THAN SIMPLY THE EMBASSY'S WILLINGNESS TO SET UP MEETINGS FOR THEM. WE THEN DESCRIBED THE DIFFERENCE BETWEEN PROVIDING GOOD OFFICES--WHICH WE EXTEND WITHOUT TAKING A POSITION ON THE MERITS OF THE DISPUTE--AND ESPOUSING A CLAIM--WHICH REQUIRES A DETERMINATION THAT A FOREIGN GOVERNMENT HAS VIOLATED INTERNATIONAL LAW. WE PLACED IMPC IN THE FORMER CATEGORY AND SAID THAT THE EMBASSY HAD MADE SERIOUS AND DILIGENT EFFORTS TO BRING

ABOUT A RESOLUTION OF THE DISPUTE. WE REMINDED THEM THAT
USG EFFORTS ARE INTENDED TO COMPLEMENT AND NOT TO SUBSTI-
TUTE FOR REMEDIES THE COMPANY MAY PURSUE ON ITS OWN.

5. IN THE END, WE AGREED TO CONSIDER SUGGESTING TO THE
GOB THAT IT TAKE A NEW LOOK AT THE IMPC MATTER--ON THE
UNDERSTANDING THAT ARANGIO WOULD BE MAKING A PARALLEL
APPROACH TO COUDERT IN AN EFFORT TO PROMPT SETTLEMENT
DISCUSSIONS. WE CONTINUE TO BELIEVE THAT THE MOST PROMIS-
ING AVENUE AT THIS TIME IS DIRECT NEGOTIATION BETWEEN
OPPOSING COUNSEL AND WOULD LIKE TO ENCOURAGE THE GOB TO
GIVE COUDERT ITS AUTHORIZATION TO NEGOTIATE A SETTLEMENT
AND ITS FULL SUPPORT TOWARD THIS END. ACCORDING TO
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DEPUTY ASSISTANT SECRETARY STEDMAN, COMIBOL'S DIRECTOR
(GEN. ALCOREZA) WAS UNDER THE IMPRESSION LAST YEAR THAT
THE ATTORNEYS WERE ALREADY DISCUSSING THIS CASE--WHICH
WAS NOT IN FACT CORRECT. FOR THAT REASON, WE WOULD PROPOSE
THAT YOU INFORM ALCOREZA (AND OTHERS IN THE GOB) THAT
IMPC'S ATTORNEYS HAVE STILL NOT ACTUALLY BEGUN SUBSTANTIVE
DISCUSSIONS WITH COUDERT BUT ARE HOPING TO IN THE NEAR
FUTURE. YOU MIGHT ALSO REMIND THE GOB OF THE STRONG
MUTUAL INTEREST WHICH BOTH GOVERNMENTS HAVE IN SEEING THE
IMPC CLAIM RESOLVED SATISFACTORILY AND URGE THE GOB TO GIVE
COUDERT, OR OTHER REPRESENTATIVES OF ITS CHOICE, AUTHORITY
TO NEGOTIATE A REASONABLE SETTLEMENT. ALCOREZA AND OTHERS
SHOULD ALSO UNDERSTAND THAT IMPC HAS EVERY INTENTION OF
FILING SUIT AGAINST COMIBOL AND THE GOB IN THE U.S. IF IT
IS UNABLE TO REACH A SATISFACTORY AGREEMENT OUT-OF-COURT.
MOREOVER, IMPC'S CLAIM RAISES QUESTIONS CONCERNING THE
APPLICABILITY OF THE HICKENLOOPER AMENDMENT WHICH THE USG
WOULD BE CALLED UPON TO ADDRESS IF OTHER POSSIBILITIES
FOR RESOLUTION OF THE CASE PROVE UNSUCCESSFUL. WE DO NOT
BELIEVE THAT IT WOULD BE IN THE INTEREST OF EITHER GOVERN-
MENT TO ALLOW THIS SITUATION TO DEVELOP INTO A MORE SERIOUS
PROBLEM.

6. DEPARTMENT WOULD LIKE EMBASSY COMMENTS ON THE APPROACH
PROPOSED ABOVE AND ANY FURTHER RECOMMENDATIONS IT MAY
HAVE BEFORE DECIDING HOW TO RESPOND TO IMPC'S REQUEST FOR
ASSISTANCE. VANCE

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